



DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1220

[Docket No. AMS-LPS-13-0066]

Soybean Promotion, Research, and Consumer Information Program: Amendment of Procedures and Notification of Request for Referendum

AGENCY: Agricultural Marketing Service (AMS); U.S. Department of Agriculture (USDA).

ACTION: Interim final rule with opportunity for comments.

SUMMARY: This interim final rule would amend the procedures to Request a Referendum by removing the specific number of soybean producers eligible to request a referendum under the Soybean Promotion, Research, and Consumer Information program, commonly known as the Soybean Checkoff Program. The number of soybean producers will be replaced with language that allows the Secretary of Agriculture (Secretary) to update this number based on information provided by USDA. Additionally, this action would remove specific USDA and Farm Service Agency (FSA) Web site and office addresses and replace them with more flexible language. These changes will enable AMS to announce future Requests for Referendum without engaging in additional notice-and-comment rulemaking. This rule also serves as AMS' official notice that soybean producers may request a referendum to determine if producers want a referendum on the Soybean Promotion and Research Order (Order), as authorized under the Soybean Promotion, Research, and Consumer Information Act (Act). If at least 10 percent (not in excess of one-fifth of which may be producers in any one State) of eligible producers, as determined by USDA, participate in the Request for Referendum, a referendum will be held within 1 year from that determination. If results of the Request for Referendum indicate that a referendum is not

supported, a referendum would not be conducted. The results of the Request for Referendum will be published in the Federal Register.

DATES: Effective [Insert date one day after publication in the Federal Register]. Comments must be received by [Insert date 30 days after date of publication in the Federal Register].

ADDRESSES: Comments may be posted online at www.regulations.gov, or sent to James R. Brow, Agricultural Marketing Specialist, Research and Promotion Division, Livestock, Poultry and Seed Program, AMS, USDA, Room 2610-S, STOP 0251, 1400 Independence Avenue, SW., Washington, D.C., 20250-0251; or via Fax to (202) 720-1125. Comments will be made available for public inspection at the above address during regular business hours or via the Internet at www.regulations.gov. Comments received will be posted without change, including any personal information provided. All comments should reference the document number, Document No. AMS-LPS-13-0066; the date of submission; and the page number of this issue in the Federal Register.

AMS also announces that soybean producers may request a referendum during a 4-week period beginning on May 5, 2014, and ending May 30, 2014. To be eligible to participate in the Request for Referendum, producers must certify that they or the producer entity they are authorized to represent paid an assessment at any time between January 1, 2012, and December 31, 2013.

Form LS-51-1, Soybean Promotion and Research Order Request for Referendum, may be obtained by mail, fax, or in person from FSA county offices from May 5, 2014, to May 30, 2014. Form LS-51-1 may also be obtained via the internet at

<http://www.ams.usda.gov/AMSV1.0/SoybeanInformationontheSoybeanRequestforReferendum>

during the same time period. Completed forms and supporting documentation must be returned to the appropriate county FSA office by fax or in person no later than close of business May 30, 2014; or if returned by mail, must be postmarked by midnight May 30, 2014, and received in the county FSA office by close of business on June 6, 2014.

FOR FURTHER INFORMATION CONTACT: James Brow, Agricultural Marketing Specialist, Research and Promotion Division, Livestock, Poultry and Seed Program, AMS, USDA, Room 2092-S, STOP 0251, 1400 Independence Avenue, SW., Washington, D.C., 20250-0251; Telephone 202/720-0633; Fax 202/720-1125; e-mail to James.Brow@ams.usda.gov or Rick Pinkston, Field Operations Staff, FSA, USDA, at Telephone 202/720-1857, Fax 202/720-1096, or by email at Rick.Pinkston@wdc.usda.gov.

SUPPLEMENTARY INFORMATION:

Executive Order 12866 and Executive Order 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This action has been designated as a “non-significant regulatory action” under § 3 (f) of Executive Order 12866. Accordingly, the Office of Management and Budget (OMB) has waived the review process.

Executive Order 13175

This interim final rule has been reviewed in accordance with the requirements of

Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this interim final rule would not have substantial and direct effects on Tribal Governments and would not have significant tribal implications.

Executive Order 12988

This interim final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have a retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 1971 of the Act, a person subject to the Order may file a petition with USDA stating that the Order, any provision of the Order, or any obligation imposed in connection with the Order, is not in accordance with the law and request a modification of the Order or an exemption from the Order. The petitioner is afforded the opportunity for a hearing on the petition. After a hearing, USDA would rule on the petition. The Act provides that district courts of the United States in any district in which such person is an inhabitant, or has their principal place of business, has jurisdiction to review USDA's ruling on the petition, if a complaint for this purpose is filed within 20 days after the date of the entry of the ruling.

Further, section 1974 of the Act provides, with certain exceptions, that nothing in the Act may be construed to preempt or supersede any other program relating to soybean promotion, research, consumer information, or industry information organized under the laws of the United States or any State. One exception in the Act concerns assessments collected by Qualified State Soybean Boards (QSSBs). The exception provides that to ensure adequate funding of the operations of QSSBs under the Act, no State law or regulation may limit or have the effect of limiting the full amount of assessments that a QSSB in that State may collect, and which is

authorized to be credited under the Act. Another exception concerns certain referenda conducted during specified periods by a State relating to the continuation of a QSSB or State soybean assessment.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), USDA is required to examine the impact of the interim final rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened.

For the purpose of the Request for Referendum, the Secretary would use the most recent number of soybean producers identified by FSA. The latest number of soybean producers identified by FSA is 569,998 and was obtained using information from 2011 and 2012 acreage reports. The data were sorted in such a manner as to include all producers that were engaged in the production of soybeans in at least one of the 2 years and exclude counting a producer more than once if that producer engaged in production during both years. The majority of producers subject to the Order are small businesses under the criteria established by the Small Business Administration (SBA) [13 CFR 121.201]. SBA defines small agricultural producers as those having annual receipts of less than \$750,000.

This interim final rule would amend the procedures to request a referendum by removing the specific number of soybean producers eligible to request a referendum under the Soybean Promotion, Research, and Consumer Information program, commonly known as the Soybean Checkoff Program. The number of soybean producers will be replaced with language that allows the Secretary to update this number based on information provided by USDA. Additionally, this

action would remove specific USDA and FSA Web site and office addresses in §§ 1220.619, 1220.622, 1220.628, and replace them with more flexible language. Further, the information collection requirements are minimal. Requesting form LS-51-1 to participate in a Request for Referendum may be done by mail, in-person, by facsimile, or via the Internet and would not impose a significant economic burden on participants.

Accordingly, the Administrator of AMS has determined that this interim final rule will not have a significant economic impact on a substantial number of small business entities.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the reporting and recordkeeping requirements included in 7 CFR part 1220 were previously approved by OMB and were assigned control number 0581-0093.

Background

The Act (7 U.S.C. 6301-6311) provides for the establishment of a coordinated program of promotion and research designed to strengthen the soybean industry's position in the marketplace, and to maintain and expand domestic and foreign markets and uses for soybeans and soybean products. The program is financed by an assessment of 0.5 of 1 percent of the net market price of soybeans sold by producers. The final rule establishing a Soybean Promotion, Research, and Consumer Information program was published in the July 9, 1991, issue of the Federal Register (56 FR 31043), and assessments began on September 1, 1991.

The Act required that an initial referendum be conducted no earlier than 18 months and not later than 36 months after the issuance of the Order to determine whether the Order should be continued. The initial referendum was conducted on February 9, 1994. On April 1, 1994, the

Secretary announced that of the 85,606 valid ballots cast, 46,060 (53.8 percent) were in favor of continuing the Order and the remaining 39,546 votes (46.2 percent) were against continuing the Order. The Act required approval by a simple majority for the Order to continue.

The Act also required that within 18 months after the Secretary announced the results of the initial referendum, the Secretary would conduct a poll among producers to determine if producers favored a referendum on the continuance of the payment of refunds under the Order.

A July 25, 1995, nationwide poll of soybean producers did not generate sufficient support for a refund referendum to be held. A refund referendum would have been held if at least 20 percent (not in excess of one-fifth of which may be producers in any one State) of the 381,000 producers (76,200) nationwide requested it. Only 48,782 soybean producers participated in the poll. Consequently, refunds were discontinued on October 1, 1995.

The Act also specifies that the Secretary shall, 5 years after the conduct of the initial referendum and every 5 years thereafter, provide soybean producers an opportunity to request a referendum on the Order. Additionally, the Act specifies that these subsequent polls require that at least 10 percent (not in excess of one-fifth in any one State) of all producers must request a referendum in order to trigger the conduct of a referendum. If a referendum is requested, it will be held within 1 year of that determination.

From October 1 to November 16, 1999, a nationwide Request for Referendum was conducted to determine if there was sufficient interest among soybean producers to vote on whether to continue the soybean checkoff program. Ten percent of the eligible 600,813 soybean producers nationwide (not in excess of one-fifth of which may be producers in any one State) were needed to participate in the Request for Referendum to trigger a referendum. Only 17,970

eligible soybean producers completed valid requests.

Five years later, another Request for Referendum was conducted May 1, 2004, through May 28, 2004. As in the prior Request for Referendum, the purpose was to determine if there was sufficient interest among soybean producers to vote on whether to continue the soybean checkoff program. To be eligible to participate in the Request for Referendum, producers or the producer entity that they are authorized to represent had to certify and provide supporting documentation showing that they or the producer entity they represent paid an assessment sometime during the representative period between January 1, 2002, and December 31, 2003. Ten percent of the total eligible 663,880 soybean producers nationwide (not in excess of one-fifth of which may be producers in any one State) were needed to participate in the Request for Referendum to trigger a referendum. Only 3,206 eligible soybean producers completed valid Requests for Referendum. This number did not meet the requisite number of 66,388; therefore, a referendum was not conducted.

The most recent Request for Referendum was conducted from May 4, 2009, to May 29, 2009, at FSA county offices. To trigger the referendum, ten percent of the total eligible 589,180 soybean producers (not in excess of one-fifth of which may be producers in any one State) needed to complete the Request for Referendum. A total of 759 valid Requests for Referendum were completed. This number did not meet the requisite number of 58,918. Therefore, a referendum was not conducted.

Changes to the Regulations

AMS is amending the language in § 1220.616 to remove the specific number of soybean procedures from the regulatory language. Data provided by FSA has been used to amend the

number of soybean procedures prior to any Request for Referendum. The data were sorted in such a manner as to include all producers that were engaged in the production of soybeans in at least one of the 2 years and exclude counting a producer more than once if that producer engaged in production during both years. Using the last two crop year acreage reports for which complete data is available ensures that all eligible producers are counted, as some producers use soybeans in rotation with other crops and do not plant soybeans every year or the market for some producers in a particular crop year may not have been conducive to growing soybeans. This methodology is consistent with that used during the last amendment to § 1220.616 in 2009.

Further, this change will enable AMS to announce future requests for referendum without engaging in additional notice-and-comment rulemaking.

In addition to the changes relating to the number of eligible soybean producers, AMS also will amend §§ 1220.619, 1220.622, and 1220.628 regarding Web site addresses and office locations as a result of internal changes within USDA, including AMS and FSA.

This interim final rule also provides official notice for the upcoming Request for Referendum.

Notice of Request for Referendum

Soybean producers may request a referendum to determine if they want a referendum on the Order, as authorized under the Act. To be eligible to participate, producers must certify that they or the entity they are authorized to represent paid an assessment at sometime between January 1, 2012, and December 31, 2013. They must complete form LS 51-1, Soybean Promotion and Research Order, Request for Referendum, in its entirety in person, by mail, or by facsimile from May 5, 2014, through May 30, 2014. Individual producers and other producer

entities would request a referendum at the county FSA office where FSA maintains and processes the producer's, corporation's, or other entity's administrative farm records. For the producer, corporation, or other entity not participating in FSA programs, the opportunity to request a referendum would be provided at the county FSA office serving the county where the producer, corporation, or other entity owns or rents land. Form LS 51-1 may also be obtained via the Internet at

<http://www.ams.usda.gov/AMSV1.0/SoybeanInformationontheSoybeanRequestforReferendum>.

If obtained by the Internet, Form LS 51-1 must be completed in its entirety and returned with the supporting documentation to the county FSA office where FSA maintains and processes the producer's, corporation's, or other entity's administrative farm records. For the producer, corporation, or other entity not participating in FSA programs, the opportunity to request a referendum would be provided at the county FSA office serving the county where the producer, corporation, or other entity owns or rents land.

Form LS 51-1 and accompanying supporting documentation may be returned in person, by mail, or facsimile to the appropriate county FSA office. Forms and supporting documentation returned in person or by facsimile must be received in the appropriate county office prior to the close of business of May 30, 2014. If returned by mail, Form LS 51-1 and accompanying documentation must be postmarked no later than midnight of May 30, 2014, and received in the county FSA office by close of business on June 6, 2014. Supporting documentation could include proof that an assessment was paid between January 1, 2012, through December 31, 2013, sales receipt, etc.

Pursuant to 5 U.S.C. 553, it is found and determined upon good cause that it is

impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of the rule until 30 days after publication in the Federal Register in order to conduct the Request for Referendum in a timely manner, consistent with the provisions of the Act and regulations.

A 30-day comment period is provided for interested persons to comment on the changes to § 1220.616. For the same reasons, this comment period is deemed appropriate.

List of Subjects in 7 CFR Part 1220

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreements, Reporting and recordkeeping requirements, Soybeans and soybean products.

For the reasons set forth in the preamble, 7 CFR Part 1220 is amended as follows:

PART 1220—SOYBEAN PROMOTION, RESEARCH, AND CONSUMER INFORMATION

1. The authority citation for part 1220 continues to read as follows:

Authority: 7 U.S.C. 6301-6311 and 7 U.S.C. 7401.

Subpart F—Procedures to Request a Referendum

2. In § 1220.616, paragraph (d) is revised to read as follows:

§ 1220.616 General.

* * * * *

(d) For purposes of paragraphs (b) and (c) of this section, the number of soybean producers in the United States will be determined by the Secretary using data provided by USDA.

3. In § 1220.619, paragraph (b) is revised to read as follows:

§ 1220.619 Time and place for requesting a referendum

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(b) Producers can determine the location of county FSA offices by contacting the nearest county FSA office in their State or by an online search of FSA Web sites.

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4. In § 1220.622, paragraph (b) is revised as follows:

§ 1220.622 Certification and request procedures

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(b) To request a referendum, eligible producers may obtain form LS-51-1 in person, by mail, or by facsimile during the request for referendum period from the county FSA office where FSA maintains and processes the producer's, corporation's, or other entity's administrative farm records. For the producer, corporation, or other entity not participating in FSA programs, the opportunity to request a referendum would be provided at the county FSA office serving the county where the producer, corporation, or other entity owns or rents land. Eligible producers may also obtain form LS-51-1 via the Internet at a Web site provided by the Secretary. For those persons who chose to obtain form LS-51-1 via the Internet, the completed form and required documentation must be submitted to the county FSA office where FSA maintains and processes the producer's, corporation's, or other entity's administrative farm records. For producers, corporations, or other entities not participating in FSA programs, the opportunity to request a referendum would be provided at the county FSA office serving the county where the producer, corporation, or other entity owns or rents land.

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5. In § 1220.628, paragraph (a) is revised as follows:

§ 1220.628 Results of the request for referendum.

(a) The Administrator, FSA, shall submit to the Administrator, AMS, the reports from all State FSA offices. The Administrator, AMS, shall tabulate the results of the Request for Referendum. USDA will issue an official press release announcing the results of the Request for Referendum and publish the same results in the Federal Register. In addition, USDA will post the official results at a Web site address provided by the Secretary. Subsequently, State reports and related papers shall be available for public inspection upon request during normal business hours at an address provided by the Secretary.

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Dated: February 25, 2014

Rex A. Barnes
Associate Administrator

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